

**Capital Improvement Committee Meeting (CIC)
Agenda & Meeting Materials
May 8, 2024 - 5:00 PM**

Metro Parks Headquarters
4702 S 19th St.
Tacoma, WA 98405



This Capital Improvement Committee Meeting (CIC) will be held at Metro Parks Headquarters, 4702 S 19th St., Tacoma, WA 98405. You can also join the meeting remotely by following the instructions below: (either by online link or by phone)

Topic: **Metro Parks Tacoma Capital Improvement Committee (CIC)**

Time: **May 8, 2024 5:00 PM Pacific Time (US and Canada)**

Join Zoom Meeting Online by clicking the link below:

<https://zoom.us/j/95041531173?pwd=ZUsvRmRLOUpNTWdZdGFxM085Zz09>

Or Dial:	(253) 215-8782
Enter Meeting ID:	950 4153 1173
Password:	039699
Participant ID:	No ID needed, just press #

Order of Presentation: In general, each agenda item will include a short staff presentation, followed by board discussion. Public Comment is not taken at this committee meeting.



**BOARD OF PARK COMMISSIONERS
CAPITAL IMPROVEMENT COMMITTEE
AGENDA**

**Wednesday, May 8, 2024
5:00 PM**

MINUTES FROM APRIL 24, 2024

PROJECT STATUS REPORT

DISCUSSION ITEMS

- N/A

ACTION ITEMS

- Authorizing the Executive Director to Negotiate the Final Terms and Execute a Ground Lease at South Park with the Asia Pacific Cultural Center
- Authorizing the Executive Director to Negotiate the Final Terms and Execute a Construction Agreement with the Asia Pacific Cultural Center for the Construction of a New Building at South Park
- Granting Maintenance Covenant and Easement Access From MPT to COT for Storm Sewer Improvements in South Park

FUTURE AGENDA TOPICS

ADJOURNMENT



BOARD OF PARK COMMISSIONERS CAPITAL IMPROVEMENT COMMITTEE

April 24, 2024
5:00 PM
MINUTES

Attendees: Commissioner Pointer, Commissioner Reid

Staff Support: **Marty Stump**, Chief Planning Officer - Planning and Development; **Kristi Evans**, Capital Program Manager, Community and Neighborhood Parks; **Claire Keller Scholz**, Planning and Asset Management Administrator, **Jim Lauderdale**, Museum Supervisor- Fort Nisqually

Acceptance of Minutes: Minutes from the March 27, 2024, meeting were approved as written.

Discussion Item

N/A

Action Items

Granting Maintenance Covenant and Easement Access From MPT to COT for Storm Sewer Improvements in Melanie Jan LaPlant Dressel Park

- Kristi stated that a resolution is being presented tonight that grants easement access to the City of Tacoma for storm water improvements at Melanie's Park.
- Marty explained that this document formalizes an agreement with the City of Tacoma as a storm water drainage system is being built within the park. He noted that the Washington State Department of Ecology requires a formal and robust stormwater management program with the city that gets mapped and surveyed.
- Staff noted that the MPT will be executing more of these types of easements for other projects as the City is now requiring that they be brought forward at the beginning of projects rather than when projects are completed.
- Kristi commented that legal will also review before this moves forward for final authorization by the ED.
- Commissioner Pointer inquired about costs associated with the easement, Kristi noted the only cost would be recording fees that will likely be paid for by the City.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

2024 Washington State Historical Society Heritage Capital Grant

Fort Nisqually Living History Museum, Pre-Application Authorization

- Marty stated that staff are preparing an application for a Capital Heritage Grant in which the grantor requires board consent.

- Jim commented that the project grant would fund the restoration of the period kitchen and sales shop.
- Claire stated that the grant requires a 2 to 1 match; staff will be looking at the Fort Nisqually Foundation to provide match funding. Claire noted that the amount of the grant request will be based on the match the Foundation believes it can fund.
- This item was accepted for moving forward to the full Board with a recommendation of approval.

Verlo Park, Purchase of 2 NHL goals and fencing system per the Kraken/One Roof system

- Kristi commented that this equipment will take 10-15 weeks to receive and is being purchased via the State Contract.
- Kristi also noted that the Kraken have used this goal/fencing system at the park that they sponsored in Seattle.
- Kristi described the panels, goals and basketball net system and diagrams were shown. She noted that artwork designed by local children will be printed on the panels.
- Kristi stated that installation will likely occur in late summer.
- Commissioners were reminded that funding for this project including the net/goal system is provided by the One Roof Foundation.
- This item was accepted for moving forward to the full Board with a recommendation of approval

Additional Items

- Kristi has been doing interviews and media since the opening of Melanie's Park and will guide a tour of the park with the Active Living and Community Wellness Advisory council on Thursday.

Meeting Adjourned



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Russell, Director of Business, Administration and Planning

SUBJECT: Authorizing the Executive Director to Negotiate the Final Terms and Execute a Ground Lease at South Park with the Asia Pacific Cultural Center.

DATE: May 8, 2024

EXECUTIVE SUMMARY: This resolution authorizes the Executive Director to negotiate the final terms and execute a Ground Lease with the Asia Pacific Cultural Center (APCC) whereby Metro Parks will lease a portion of South Park to APCC.

BACKGROUND: APCC is a non-profit organization that has been providing complementary cultural programming services for the community for many years. Metro Parks entered into a lease agreement with APCC in 2012 for APCC to provide cultural programming and services in the former South Park Community Center building. This lease was updated in 2020 with a 20-year term that included APCC making certain capital improvements to the Cultural Center.

Metro Parks and APCC assessed the existing building and determined that it was functionally obsolete. Thereafter, APCC agreed to demolish that building at its sole expense, which was the subject of a separate Demolition Agreement. APCC completed the demolition work earlier this year. In the interim, APCC has been working with Metro Parks to design a new Cultural Center building to be constructed at South Park. The design drawings place the new building in the same footprint as the former South Park building. APCC will provide all project funding which is expected to be approximately \$18.3 million dollars. The construction of this new building is addressed in a separate Construction Agreement. APCC has secured all of the permits necessary to construct the new building.

The proposed Ground Lease has an initial term of 30 years, but it may be extended an additional 20 years if Metro Parks does not elect to terminate the lease prior to the extension term. Since APCC has paid for all of the costs to demolish the old building and construct the new building, as well as continue to provide the cultural programming and services to the community, the rent will be \$1.00 per year.

Metro Parks supports APCC's programming and services and this Ground Lease will allow APCC to continue to do so for many years to come. The construction of the new cultural center building is

the subject of a Construction Agreement that will be presented to the Board separately from this Ground Lease.

FISCAL IMPACT: APCC provided all of the funding and did demolish the old building and related improvements. APCC is providing all of the funding to construct the new cultural center building. Metro Parks is providing the Ground Lease for the purpose of providing a place to construct that new building, which will be constructed within the footprint of the old building.

ADDITIONAL INFORMATION: For additional information, please contact Debbie Russell, Director of Business, Administration and Planning at (253) 305-1086 or debbie.russell@tacomaparks.com.

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. R

AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE THE FINAL TERMS AND EXECUTE A GROUND LEASE AT SOUTH PARK WITH THE ASIA PACIFIC CULTURAL CENTER.

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desires to maintain quality facilities at South Park; and

WHEREAS, Metro Parks leased the former South Park Community Center building to the Asia Pacific Cultural Center (APCC) since 2012; and

WHEREAS, APCC is a non-profit organization and long-term partner with Metro Parks providing complementary cultural programming and services for the benefit of the community; and

WHEREAS, Metro Parks and APCC determined that the existing building at South Park was functionally obsolete; and

WHEREAS, Metro Parks and APCC entered into a Demolition Agreement to remove the building, at APCC's sole expense, which APCC completed earlier this year; and

WHEREAS, APCC has worked with Metro Parks to design and permit a new building at South Park to be constructed within the footprint of the former building; and

WHEREAS, APCC has agreed to construct the new building at its sole expense, which is the subject of a separate Construction Agreement, and APCC has agreed to provide programming and services for the benefit of the public at the new building in exchange for Metro Parks providing a Ground Lease at South Park for \$1.00 per year. Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma that the Executive Director is authorized to negotiate the final terms and execute the Ground Lease with the Asia Pacific Cultural Center for the purposes of constructing a new building at South Park and providing programming and services for the benefit of the public at the new building.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____2024.

President

ATTEST:

Secretary

Clerk

**GROUND LEASE
BY AND BETWEEN
THE METROPOLITAN PARK DISTRICT OF TACOMA
AND
THE ASIA PACIFIC CULTURAL CENTER
FOR
THE ASIA PACIFIC CULTURAL CENTER AT SOUTH PARK**

This Ground Lease (the “Lease”) is dated May ____, 202 (for reference purposes only) and is by and between the Metropolitan Park District of Tacoma, a Washington municipal corporation (hereinafter referred to as “Metro Parks”) and the Asia Pacific Cultural Center, a Washington non-profit corporation (hereinafter referred to as “APCC”). Metro Parks and APCC are sometimes collectively referred to herein as the “Parties”.

In consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. Property Leased. Metro Parks hereby leases to APCC and APCC leases from Metro Parks certain real property located at 4851 South Tacoma Way, Tacoma, Washington which is located within the property commonly known as South Park, a public park. South Park is legally described on Exhibit A and the real property that is the subject of this Lease is depicted on Exhibit B (the “Premises”). The Premises consists of a building pad and parking lot. APCC shall have exclusive use of the building pad and non-exclusive use of the parking lot.
2. Condition of the Premises. APCC has leased the Premises from Metro Parks since 2011, removed the previously existing building pursuant to the Demolition Agreement dated ____, 2023 and is intimately familiar with the condition of the Premises. Neither Metro Parks nor its agents have made any representations or warranties whatsoever with respect to the condition of the Premises or any improvements thereto, or its fitness or availability for any particular use, and Metro Parks shall not be liable for any latent or patent defect thereon. APCC accepts the Premises "AS IS," and "IN ITS PRESENT CONDITION," and "WITHOUT ANY WARRANTIES WHATSOEVER."
3. Condition Precedent. This Lease is conditioned upon and subject to the terms of the Construction Agreement dated May ____, 2024 between the parties wherein APCC has agreed to construct a new building and related improvements on the Premises. A copy of the Construction Agreement is attached as Exhibit C.
4. Lease Initial Term, Extension Term and Termination.

4.1. Initial Term. The initial term of this Lease shall be Thirty (30) years commencing on June 1, 2024 and expiring on May 31, 2054, except as otherwise provided herein.

4.2. Extension Term. The lease term shall automatically be extended for an additional Twenty (20) years to May 31, 2074 unless:

4.2.1. On or prior to December 31, 2051, Metro Parks provides written notice to APCC that the Premises is necessary for park and/or recreation purposes, which determination shall be in Metro Parks' sole and absolute discretion; or

4.2.2. APCC provides written notice to Metro Parks that APCC is electing not to extend the lease term, in its sole and absolute discretion.

4.3. Termination. Metro Parks may terminate this Lease and recapture the Premises prior to the expiration date if, in Metro Parks' sole and exclusive judgment, the Premises becomes necessary for park or recreation purposes. In the event that Metro Parks exercises this right and terminates this Lease early, such termination shall be subject to the terms and conditions in Section 25 below.

5. Use of Premises / Public Access Requirements / Name.

5.1. The Premises shall be used only as an educational facility for the purposes of cultural, environmental and education programming and activities for the general public as well as to hold events that are directly related to environmental and educational programming and shall not be used for any other purpose. APCC shall at its own cost and expense obtain all licenses and permits necessary for its use of the Premises or any portion thereof.

5.2. APCC shall allow public access to the Premises for _____.

5.3. APCC shall not allow the use of drones or other powered flying devices on the Premises or portion thereof unless otherwise approved in writing by Metro Parks and proof of appropriate insurance.

5.4. Under no circumstances shall APCC allow any residential use or conduct any commercial operation, including without limitation the sale of services or goods, or provide alcoholic beverages at or on the Premises without first obtaining the express written consent of Metro Parks' Executive Director or Board of Park Commissioners, which consent may be withheld for any reason.

5.5. The name of the facility shall be _____. APCC shall not post, place, or in any manner display any sign, notice, picture, placard or poster, or any advertising matter whatsoever directed to persons outside the Premises without

first obtaining Metro Parks' prior written consent. Metro Parks reserves the right to place its own signage on the Premises recognizing its ownership interests and contributions.

6. Joint Use of Facilities. With the intent of maximizing public resources and as further consideration for this Lease, APCC is agreeable to making the improvements to the Premises described in the Construction Agreement available for Metro Parks' use. Due to the uncertainty as to which improvements will be constructed and when, as well as the availability of those improvements and the changing needs of the parties over time, the specific joint uses of the Premises and its improvements cannot be determined at this time and are likely to change over time. To avoid the necessity of frequently amending this Lease to reflect those joint uses and changes to those joint uses, the parties agree any joint use, and the cost sharing associated therewith, will be reflected in a separate instrument (a "Joint Use Agreement"). APCC's Executive Director and Metro Parks' Executive Director are authorized to prepare, negotiate, execute and implement such Joint Use Agreements as they mutually agree are necessary to implement the policy directives of maximizing public resources and collaboration to provide services to support the community.

7. Rent. The parties recognize that APCC is responsible for demolishing the existing improvements and constructing a new building that has been reviewed and approved by Metro Parks in accordance with the Demolition and Construction Agreement, that APCC will be providing services to the community as provided in Section 5 above and that Metro Parks will have joint use of the facility as provided in Section 6 above. Therefore, APCC shall pay rent to Metro Parks for each year in the amount of One Dollar (\$1.00).

8. Assessments / Taxes.

8.1. APCC shall pay, before any fine, penalty, interest, or cost may be added, become due, or be imposed for nonpayment thereof, the following: all taxes (including without limitation any leasehold excise taxes), assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, LIDs, ULIDs, licenses and permit fees, connection charges and other municipal, local, state and federal governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature, which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, the Premises, or any improvements thereon, or any part thereof or any appurtenance thereto, or any use or occupation of the Premises or resulting from this Lease.

8.2. If APCC fails, refuses, or neglects to make any payment required in this Section, Metro Parks may do so. In that event, APCC shall, upon Metro Parks' demand, repay to it the amounts so paid, including reasonable attorneys' fees and all other expenses reasonably incurred because of or in connection with the

payments, together with interest thereon at the rate of twelve (12) percent per annum. Metro Parks may collect or enforce any payment in the same manner as though it were an installment of rent specifically required by the terms of the Lease to be paid by APCC, on the day when Metro Parks demands repayment of or reimbursement therefor. However, Metro Parks' election to make the payment shall not waive APCC's default.

8.3. Metro Parks and APCC intend that the rent provided for above shall be an absolutely net return to Metro Parks, without deduction or setoff for any reason whatsoever, free and clear of any expenses or charges with respect to the Premises, including but not limited to real and personal property taxes, assessments, other public charges, cost of insurance, operation, maintenance, repair, upkeep, renewal, improvement, alterations or reconstruction. In the event any of such expenses or charges are not included specifically in this Lease, APCC agrees to pay the same.

9. Utilities.

9.1. APCC shall, at its sole cost and expense, arrange for the furnishing of all utilities, including electricity, water, sewer, telephone or other utility necessary for the operation of APCC's improvements, and APCC covenants and agrees to pay all charges therefore directly, to the applicable public utility or governmental authority furnishing such service to the Premises, the amounts due for such services as indicated by meters measuring APCC's consumption thereof.

9.2. Metro Parks shall not be liable in any way to APCC for any failure or defect in the supply or character of any utilities furnished to the Premises by reason of any requirement, act or omission of the utility providing such service or for any other reason.

9.3. Metro Parks shall not be required to furnish any services or utilities of any nature to the Premises during the term of this Lease and APCC hereby assumes full and sole responsibility for the supply of and payment for all utilities and services.

10. Maintenance and Repairs.

10.1. APCC shall at its sole cost and expense keep all of the improvements at or on the Premises in good condition, maintenance and repair. At no time shall Metro Parks ever be responsible for any maintenance or repair work, or any costs associated thereto, to the Premises or any of its improvements including without limitation, the building, the parking area and all ancillary and/or related structures. The minimum levels of maintenance and repair shall be equal to or better than the levels of Metro Parks' maintenance and care at its facilities that are similar in nature.

10.2. APCC shall at all times keep the Premises and all improvements thereon, as well as any work areas, loading areas adjacent to the Premises, refuse storage areas and other areas adjacent to the Premises, neat, clean, in a safe and sanitary condition and free from infestation of pests. APCC shall keep all areas in the vicinity of the Premises free from the accumulation of disposable products and other litter generated by the operation of APCC's business.

10.3. The Parking Areas shall be maintained by Metro Parks; provided, however, APCC shall be solely responsible for any extraordinary wear and tear caused by any activity or use of those areas by APCC, its students, guests, licensees or invitees. Maintenance of the Parking Areas shall be further addressed in the Joint Use Agreement specified in Section 9 above.

10.4. Stormwater Maintenance Covenant. APCC shall be responsible for performing all of the obligations of the Grantor or Owner pursuant to the Maintenance Covenant and Access Easement dated _____, 2024 and recorded under Pierce County Auditor No. _____ relating to the stormwater system.

10.5. Covenant

10.6. Metro Parks may, but is not under any obligation, to perform a facility maintenance operations inspection for the Premises. The inspections will be no more frequently than annually. APCC shall perform any necessary maintenance identified in that inspection within thirty (30) days of written notice.

10.7. Every five (5) years, APCC will perform a condition assessment/life cycle analysis of critical components of the Premises, using a licensed professional, which shall include, at a minimum, the following components: all structural, electrical, mechanical, roof and external building envelopes. The results of this assessment and analysis shall be documented in a written report and provided to Metro Parks. APCC shall replace or upgrade any components representing five years or less of life within 24 months of the assessment.

11. Alterations and Improvements. The Construction Agreement shall control with regard to the construction of capital improvements on the Premises. For all other alterations and/or improvements, the terms in this section shall apply.

11.1. APCC shall be responsible for all capital improvements required for operation of the Premises, as required by all applicable federal, state and local agencies. APCC shall not make any alterations, additions, or improvements in or to the Premises or to the improvements thereon, or add, disturb, or in any way change any plumbing or wiring or other utility therein without the prior written

consent of Metro Parks. Metro Parks shall not be responsible for any costs associated with such improvements.

11.2. APCC shall provide to Metro Parks for its review and approval detailed plans and specifications of any such alterations, additions and/or improvements. Any alterations, additions and/or improvements by APCC may only be done at times and in conformity with the plans and specifications approved in advance and in writing by Metro Parks.

11.3. Any and all tenant improvements made by APCC on the Premises shall be at the sole cost and expense of APCC. Metro Parks shall have no responsibility whatsoever with respect to any such tenant improvements, permitting costs or other costs of development. Except to the extent of APCC's tenant improvements, APCC shall have no responsibility whatsoever with respect to any improvements owned by Metro Parks located outside of the Premises. APCC shall obtain all required approvals and permits from the City of Tacoma and any other State or local governmental agency, department or entity with jurisdiction for all alterations, additions, or improvements.

11.4. If requested by Metro Parks, APCC shall post a bond or other security reasonably satisfactory to Metro Parks to protect Metro Parks against liens arising from work performed by or for APCC. All work performed must be done in a workmanlike manner and with material (when not specifically described in the plans and specifications approved by Metro Parks) of the quality and appearance customary in the trade for first-class construction of buildings of the type located on the Premises and will be the property of Metro Parks upon the expiration or earlier termination of this Lease, unless Metro Parks requires APCC to remove any such improvements or alterations. In the event Metro Parks elects to require APCC to remove such improvements or alterations, APCC shall restore the Premises to the condition it was on the commencement date of this Lease, reasonable wear and tear excepted.

11.5. If Metro Parks consents to an improvement or alteration, Metro Parks shall at the same time advise APCC whether or not improvement or alteration must remain or must be removed at the expiration or termination of this Lease. In the event that Metro Parks fails to so specify, APCC shall be required to remove the improvement or alteration at the expiration or termination of this Lease.

11.6. Subject to the prior written approval of Metro Parks' Executive Director, APCC may close the Premises for a reasonable time for repairs or remodeling, provided that a written notice of such impending closure is posted in a conspicuous place on the Premises for at least one week immediately prior to the closure date. APCC may close the Premises or any portion thereof in an emergency without the approval of Metro Parks' Executive Director. APCC shall furnish approved signs at the Premises entrance advising the public that the center is closed.

12. Right of Entry / Inspection. Metro Parks and its agents may enter upon the Premises at all reasonable times to examine their condition and use and for the purpose of determining APCC's compliance with the provisions of this Lease, so long as that right is exercised in a manner that does not materially interfere with APCC in the conduct of its business on the Premises.

13. Compliance with Applicable Laws, Regulations and Rules. APCC shall not knowingly commit or willfully permit to be committed on the Premises any act or thing contrary to the law, rules or regulations of any applicable federal, state or local governmental authority, including but is not limited to Tacoma Municipal Code Chapter 8.27 (the Park Code).

14. Assignment and Subletting. APCC shall not have the right, voluntarily or involuntarily, to assign, convey, transfer, mortgage or sublet the whole or any part of the Premises under this Lease. This prohibition applies to assignments, subleases and other transfers by which APCC transfers any interest, including partial or indirect interests, in the leasehold created hereby.

15. Insurance.

15.1. Insurance. As soon as APCC commences construction on the Premises or any part of it, or from and after any earlier date when APCC makes actual use of or occupies the Premises or any part of it, APCC shall cause to be written a policy or policies of insurance in the form generally known as public liability policies. In addition, if any boilers or elevators are included in improvements located on the Property, APCC shall cause to be written boiler insurance and elevator insurance policies. The policies shall insure APCC against all claims and demands made by any person or persons for injuries received in connection with the operation and maintenance of the Property, improvements, and buildings located on the Premises and for any other risk insured against by such policies. Each class of policies shall be written within limits as reasonably required by Metro Parks but in amounts of not less than \$5,000,000 for damages incurred or claimed by any one person for bodily injury per occurrence, plus \$5,000,000 for damages to property per occurrence. Metro Parks may review and increase the limits from \$5,000,000 to such higher amount as it reasonably requires at least as often as every five (5) years

15.2. APCC's obligation. From and after the time the Lease commences, APCC will keep insured any and all buildings and improvements upon the Premises against all loss or damage by fire and windstorm, together with "extended coverage." The amount of insurance shall at all times be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, and shall not be less than 100 percent of the full insurable value. All of the insurance policies shall include Metro Parks as one of the insured parties and shall fully

protect both Metro Parks and APCC, as their respective interests may appear. All insurance received by Metro Parks and the Lessee for the destruction of buildings or improvements by fire, windstorm, or other casualty shall be deposited in a joint account in a bank designated by APCC in Pierce County. These funds shall be made available to APCC for the construction or repair, as the case may be, of any building or buildings damaged or destroyed by fire, windstorm, or other casualty for which insurance is payable or alternatively to the cost of demolishing and removing the improvements and returning the Premises to its Natural State.

15.3. Delivery of policies. APCC shall deliver to Metro Parks copies of all such policies along with the receipted bills evidencing payment of the premiums for them.

15.4. Damages; insurance proceeds; joint bank account. If APCC is not in default, it shall be paid any excess money received from insurance remaining in the joint bank account after the building or buildings are reconstructed, repaired or demolished. If, after damage or destruction caused by fire, windstorm, or other cause, APCC does not commence reconstruction, repair or demolition within 6 months from the date of payment of the loss and prosecute the reconstruction, repair or demolition so that it will be completed within 15 months after the damage or destruction occurs, it shall pay to Metro Parks the amount collected, or the balance thereof remaining in the joint account which shall be used to complete the demolition of the improvements and return the Premises to its Natural State.

15.5. Direct repayment. Notwithstanding the above, if the insurance proceeds are \$25,000 or less, no joint bank account shall be created but the proceeds shall be paid directly to APCC, who shall use the funds to make the necessary replacements or repairs.

15.6. All such policies of insurance furnished by APCC shall name Metro Parks as named or additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Metro Parks thirty (30) days prior written notice. APCC agrees to provide Metro Parks with a certificate showing such insurance to be in effect. Insurance shall be effected under policies issued by insurers of recognized responsibility which are licensed to do business in the State of Washington and are excellently rated by a national rating organization.

15.7. If APCC fails to procure or maintain the insurance required of APCC, Metro Parks may at Metro Parks' option obtain such insurance and charge APCC the costs thereof plus 20% handling, all of which will be due upon written demand, as additional rent.

15.8. Metro Parks and APCC hereby release and waive for the duration of this Lease their respective and entire rights or recovery against each other and/or their respective agents and invitees responsible for any loss resulting from perils of fire,

casualty and extended risk coverage as defined in fire insurance policies issued to either Metro Parks or APCC in effect at the time of the happening of the event, provided that such waiver of release shall apply only in the event such agreement does not prejudice the insurance afforded by such policies.

15.9. No Limitation. APCC's maintenance of insurance as required by the Lease shall not be construed to limit APCC's liability to the coverage provided by such insurance, or otherwise limit Metro Parks' recourse to any remedy available at law or in equity.

15.10. Other Insurance Provisions. APCC's insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to Metro Parks. Any insurance, self-insurance, or self-insured pool coverage maintained by Metro Parks shall be excess of APCC's insurance and shall not contribute with it.

15.11. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

15.12. Verification of Coverage. APCC shall furnish Metro Parks with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing APCC's insurance requirements.

15.13. Notice of Cancellation. APCC shall provide Metro Parks with written notice of any policy cancellation within two business days of their receipt of such notice. APCC's insurance company shall endorse the insurance policies, substantially as follows: This insurance policy is primary over any insurance which may be carried by the Metropolitan Park Metro Parks of Tacoma and it is agreed that the Metropolitan Park Metro Parks of Tacoma will be given not less than thirty (30) days advance written notice of any termination of this policy.

15.14. Full Availability of Insurance Limits. If APCC maintains higher insurance limits than the minimums shown above, Metro Parks shall be insured for the full available limits of those policies irrespective of whether such limits maintained by APCC are greater than those required by this Lease or whether any certificate of insurance furnished to Metro Parks evidences limits of liability lower than those maintained by APCC.

16. Damage to the Premises. If any portion of the Premises is damaged or destroyed, APCC shall, at its election, either (1) immediately restore the Premises as nearly as practicable to its condition immediately prior to such damage or destruction; or (2) demolish and remove the improvements as specified by Metro Parks in writing, return the Premises to a park like status and pay to Metro Parks any and all insurance funds remaining after such work and terminate this Lease. If APCC elects to perform the restoration, such restoration shall be promptly commenced and diligently performed to

completion. Metro Parks shall not be liable for any lost profits, or actual or consequential damages by reason of such damage or destruction.

17. Risk of Loss. Loss of improvements and/or personal property on the Premises will be at the risk of APCC. Metro Parks and Metro Parks' agents shall not be liable for theft or any damage, either to the person or property, sustained by APCC or others, caused by any defects now in or on said Premises or the building or any service facilities, or defect hereafter occurring therein; or due to the building (in which the Premises are situate) or any part of appurtenances hereof becoming out of repair; or caused by fire or by the bursting or leaking of water, gas, sewer or steam pipes; or caused by any act or neglect of other occupants of said building or any other persons; or due to the happening of any accident from whatsoever cause in or about said building.

18. Indemnification/Hold Harmless.

18.1. Metro Parks shall not be liable to APCC or APCC's officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "APCC Parties"), or to any other person for any damage, expense, loss or liability, including injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the act or omission of APCC, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the condition of the Premises, or due to any other cause unless caused by the negligence or willful misconduct of Metro Parks, and APCC hereby releases Metro Parks from any such liability.

18.2. APCC hereby releases and shall defend, indemnify and hold harmless Metro Parks and Metro Parks' officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "Metro Parks Parties") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises or portion thereof; (b) the negligence or willful misconduct of any of APCC Parties; and (c) any breach or default by APCC in the performance of any obligation on APCC's part to be performed under this Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Metro Parks, its agents, employees, contractors or invitees, or (ii) to the indemnity in Section 19 regarding Hazardous Materials. In the absence of comparative or concurrent negligence on the part of any Metro Parks Parties, the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by Metro Parks in successfully establishing the right to indemnity (including in any bankruptcy proceeding). APCC shall at Metro Parks' request assume the defense of any claim subject to this indemnity. Metro Parks agrees to cooperate fully with APCC and APCC's counsel in any matter where

APCC elects to defend, provided APCC promptly reimburses Metro Parks for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of APCC Parties and Metro Parks, APCC's duty to indemnify and defend shall be proportionate to APCC's allocable share of any joint negligence or willful misconduct.

18.3. Metro Parks hereby releases and shall defend, indemnify and hold harmless APCC and APCC's officers, directors, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "APCC Parties") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises or portion thereof; (b) the negligence or willful misconduct of any of APCC Parties; and (c) any breach or default by APCC in the performance of any obligation on APCC's part to be performed under this Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Metro Parks, its agents, employees, contractors or invitees, or (ii) to the indemnity in Section 19 regarding Hazardous Materials. In the absence of comparative or concurrent negligence on the part of any Metro Parks Parties, the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by Metro Parks in successfully establishing the right to indemnity (including in any bankruptcy proceeding). APCC shall at Metro Parks' request assume the defense of any claim subject to this indemnity. Metro Parks agrees to cooperate fully with APCC and APCC's counsel in any matter where APCC elects to defend, provided APCC promptly reimburses Metro Parks for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of APCC Parties and Metro Parks, APCC's duty to indemnify and defend shall be proportionate to APCC's allocable share of any joint negligence or willful misconduct.

18.4. The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the indemnifying party hereby waives any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit or disability laws.

18.5. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE.

19. Hazardous Materials.

19.1. The term “Hazardous Materials” refers to any substances, materials and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. The term “Hazardous Materials” shall not include any equipment or products utilized in normal school operations.

19.2. APCC shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, in, above, to, or from the Premises or portion thereof except as such Hazardous Materials are (i) used, stored and disposed of in conformance with manufacturer recommendations and all applicable legal requirements, (ii) are used in connection with APCC’s permitted use as specified above; and (iii) used in normal school operations. Provided, however, that the provisions of this Section 19.2 and the provisions of Section 19.3 below do not apply to any Hazardous Materials present on, under, in, above, to, or from the Premises or portion thereof prior to APCC’s occupancy so long as APCC does not cause or contribute to the exposure, release or discharge of such preexisting Hazardous Materials.

19.3. In the event APCC fails to comply with the requirements of Section 19.2 above, the following shall apply:

19.3.1. APCC shall indemnify, defend and hold Metro Parks Parties harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (collectively “Remedial Work”) relating to Hazardous Materials required by, or incurred by Metro Parks or any entity or person with a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release or discharge of any Hazardous Material on, under, in, above, to, or from the Premises;

19.3.2. if any Remedial Work is required under any applicable federal, state or local law during the term of this Lease, APCC shall perform or cause to be performed the remedial work in compliance with such law, regulation or order; and

19.3.3. all Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by APCC and approved in advance in writing by Metro Parks. If APCC does not commence the Remedial Work in a timely fashion or does not diligently prosecute the Remedial Work to completion, Metro Parks may, but shall not

be required to cause the remedial work to be performed, subject fully to the indemnification of this paragraph.

19.4. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS LEASE THAT EACH OF THE RELEASE AND INDEMNIFICATION PROVISIONS OF THIS LEASE RELATING TO HAZARDOUS MATERIALS WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS LEASE.

20. No Security Interests, Liens or Encumbrances.

20.1. APCC shall keep its leasehold interest in the Premises and any improvements thereon free of the existence of any security interest unless expressly approved by Metro Parks in writing, which approval may be withheld by Metro Parks for any reason and at its sole discretion.

20.2. APCC shall keep the Premises free from any liens or encumbrances arising out of any work performed by or at the request of APCC, materials furnished by or at the request of APCC, or obligations incurred by APCC. At Metro Parks' request, APCC shall furnish Metro Parks with written proof of payment of any item which would or might constitute the basis for such a lien on the Premises if not paid or APCC shall indemnify and defend Metro Parks in connection with any such lien, provided that APCC shall have the right to contest any lien claim.

20.3. APCC will discharge, by bond or otherwise, any mechanic's lien filed against the Premises or part thereof for work claimed to have been done for, or materials claimed to have been furnished to APCC within thirty (30) days after filing. APCC will indemnify, defend and hold Metro Parks harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of Metro Parks in the Premises or under the terms of this Lease.

20.4. In the event that APCC has any work performed at or on the Premises, the contractor for such work shall provide a performance bond to the extent required under Title 39 RCW. The performance bond shall name Metro Parks as an insured and beneficiary.

21. Insolvency. Metro Parks may terminate this Lease by giving APCC notice of its election to do so, if: (i) APCC files a voluntary petition in bankruptcy, or for reorganization under the bankruptcy laws, or is adjudged a bankrupt by a court of competent jurisdiction, (ii) APCC makes an assignment for the benefit of creditors, or a receiver is appointed for APCC's business, or (iii) any other action is taken by or against APCC under any State or Federal insolvency or bankruptcy act. No interest in this Lease or estate hereby created in favor of APCC shall pass by operation of law under any such bankruptcy or insolvency act to any person whomsoever without the prior express written consent of

Metro Parks. Any purported transfer in violation of this section shall constitute default by APCC. Notwithstanding the above, if in any bankruptcy, insolvency or receivership proceeding, whether voluntary or involuntary, APCC fully and punctually complies with all other agreements, terms, covenants and conditions of this Lease on the part of APCC to be performed, then this Lease shall not be terminated but shall continue in full force and effect.

22. Default. In addition to Section 21 above, the following events are deemed to be events of default by APCC under this Lease:

22.1. If APCC shall be in default of the performance of any obligations, covenants, conditions or provisions of this Lease, and if such default is not cured within the timeframe specified herein for that default or if not specified sixty (60) days after written notice thereof is given by Metro Parks to APCC; or if such default should be of such a nature that it cannot be cured completely within such sixty (60) day period, if APCC shall not have promptly commenced within such sixty (60) day period or shall not thereafter proceed with reasonable diligence and in good faith to remedy such default;

22.2. If the Premises becomes abandoned or deserted by APCC for a period of six (6) months or more;

22.3. The making by APCC of any general assignment or general arrangement for the benefit of creditors; or the filing by or against APCC of a petition to have APCC adjudged a bankrupt, or a petition for reorganization, or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against APCC, the same is dismissed within sixty (60) days); or, the appointment of a trustee or a receiver to take possession of substantially all of APCC's assets located at the Premises or of APCC's interest in this Lease, where possession is not restored to APCC within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of APCC's assets located at the Premises or of APCC's interest in this Lease, where such seizure is not discharged in thirty (30) days; or

22.4. If this Lease shall be assigned or the Premises sublet other than in accordance with the terms of this Lease and such default is not cured with ninety (90) days after written notice to APCC.

23. Remedies.

23.1. If any of the events of default set forth in Section 23 are not cured within the period stated above, then Metro Parks may immediately or at any time thereafter recover the Premises in the manner provided by law and may reenter the Premises, using such force as may be necessary, and repossess itself thereof, and APCC shall have no further rights under this Lease or in and to the Premises or any part thereof.

23.2. APCC agrees to pay as additional consideration any and all sums which may become due by reason of the failure of APCC to comply with all the covenants of this Lease and any and all damages, costs and expenses which Metro Parks may suffer or incur by reason of any default of APCC.

23.3. Without in any way limiting the above remedies in the event of default, if APCC defaults in the performance of any covenant or condition under this Lease required to be performed by APCC, then Metro Parks may, at its option and upon twenty (20) days' prior written notice to APCC, or without notice if in Metro Park's opinion an emergency exists, perform such covenant or condition for the account and at the expense of APCC.

23.4. The statement of specific remedies as set forth above is not exclusive, and Metro Parks shall, at its option, have available any and all other remedies for default available to it under the laws of the State of Washington.

24. Surrender at End of Term. Upon the expiration or termination of this Lease, all alterations, additions, improvements, and fixtures shall remain in good condition, reasonable wear and tear excepted; shall become the property of Metro Parks and shall remain in and be surrendered with the Premises as a part thereof, without disturbance, molestation or injury. Provided, however, that Metro Parks may require some or all of the improvements be removed by APCC. All wiring, electrical panels, conduits and telephone cables, all heating, ventilating and air conditioning equipment and wiring, ducts, and plumbing, light fixtures and bulbs shall be considered improvements and shall not be removed from the Premises, but shall be considered as improvements to the building.

25. Early Termination. In the event that Metro Parks determines the Premises are necessary for its park and recreation purposes and exercises its right to early termination pursuant to Section 4.3 above, Metro Parks shall provide to APCC written notice delivered not less than twenty-four months prior to the date of lease termination (the "Notice of Termination"). Metro Parks shall further have the obligation to pay to APCC a reimbursement amount determined by the following methods and terms:

25.1. As used in this Section the following definitions shall apply:

"Replacement Cost" shall mean as of the date of Notice of Termination, the cost of replacing the improvements to the Premises constructed by APCC, including site preparation, permits, design, and sales tax, but not including furniture, fixtures and equipment or the value of land.

"Fair Market Value" shall mean as of the date of Notice of Termination, the fair market value of the improvements constructed by APCC on the Premises, not including furniture, fixtures and equipment or the value of the land, as determined by a licensed real estate appraiser using generally

accepted appraisal methods.

"Demolition Cost" shall mean those direct costs paid for by APCC for the demolition of the existing building and improvements on the Premises by APCC; provided that such demolition must be reasonably necessary for Metro Parks to use the Premises for Metro Parks' intended purpose.

"Original Cost of Construction" shall mean those direct costs paid for by APCC for the construction of the new improvements as specified in the Construction Agreement beginning with schematic design work and concluding with actual construction expense and shall include site preparation, permit expense, design and construction administration expenses to the extent they are directly attributable to the improvements, but shall not include any non-project administration costs, litigation costs, furniture, fixtures or equipment or the value of the land.

"Depreciation Value" shall mean a particular value for each year of the lease term, with year one beginning on the date of execution of the Lease, as follows:

Lease Year	Depreciation Value
1	.98
2	.96
3	.94
4	.91
5	.88
6	.86
7	.83
8	.81
9	.78
10	.75
11	.72
12	.69
13	.66
14	.63
15	.60
16	.57
17	.54
18	.50
19	.47
20	.44
21	.44
22	.38
23	.38
24	.32

25	.32
26	.26
27	.26
28	.23
29	.23
30	.21
31	.20
32	.19
33	.18
34	.17
35	.16
36	.15
37	.14
38	.13
39	.12
40	.11
41	.10
42	.09
43	.08
44	.07
45	.06
46	.05
47	.04
48	.03
49	.02
50	.01

25.2. Within 90 days of sending APCC written notice of Metro Parks' intent to recapture, Metro Parks shall estimate the Replacement Cost and Metro Parks may, at its discretion, also obtain an appraisal of the Fair Market Value.

25.3. Once the Replacement Cost and Fair Market Value (if applicable) have been determined, the lesser of the Replacement Cost or Fair Market Value shall then be multiplied by the Depreciation Value for the appropriate year of the Lease as set forth in Section 25.1 above. The product thereof shall then be reduced by the Demolition Cost. The resultant amount shall be the reimbursement amount due APCC; PROVIDED, HOWEVER, that the reimbursement amount shall be capped at and shall not exceed the Original Cost of Construction.

For example, assume the Original Cost of Construction of APCC's improvements is \$16,000,000.00, the estimated Replacement Cost is determined to be \$22,000,000.00, the Fair Market Value of the improvements is \$18,000,000.00, the estimated Demolition Cost is \$200,000.00, and the Lease is terminated at year 15 after proper notice with a Depreciation Value of .60. The reimbursement amount is calculated as follows:

\$18,000,000.00 multiplied by .60, less \$200,000.00 = \$10,600,000.00.

25.4. If APCC does not agree to the Replacement Cost or Fair Market Value as determined by Metro Parks or Metro Parks' appraiser, APCC may retain its own architect or appraiser at its own cost to develop its own replacement cost estimate or fair market value estimate. If the parties are then unable to agree on a sum between their respective estimates, then the replacement cost or fair market value (or both if both are contested) shall be determined by binding arbitration in accordance with the laws of the State of Washington. The parties shall mutually agree upon an impartial arbitrator; and failing agreement, either party may apply to the Presiding Judge of the Pierce County Superior Court for the appointment of such an arbitrator with due notice being given to the other party. The parties shall share equally the arbitrator's fees. Except for sharing the arbitrator's fees, each side shall pay its own costs and fees, including any attorney fees in any arbitration.

25.5. The sum determined shall be paid by Metro Parks to APCC not later than sixty (60) days after the effective date of the termination or sixty (60) days after Metro Parks and APCC agree on the reimbursement amount, whichever occurs later.

25.6. To effectuate determination of the Demolition Cost, within thirty (30) days of the execution of this Lease APCC shall provide to Metro Parks an itemized and detailed description of all elements comprising APCC's proposed Demolition Cost including all invoices and payments. Metro Parks shall review the proposed Demolition Cost provided by APCC and APCC shall provide to Metro Parks', its architect or consultant any supporting documentation requested. Within sixty (60) days of receipt of all necessary documentation, Metro Parks shall either agree with the proposed Demolition Cost or deliver to APCC a detailed list of those cost amounts that Metro Parks does not agree are appropriate for inclusion. Thereafter, Metro Parks and APCC shall work together to reach agreement on an agreed Demolition Cost.

25.7. To effectuate determination of the Original Construction Cost, within thirty (30) days after the issuance of a Certificate of Occupancy by the City of Tacoma for the improvements constructed by APCC, APCC shall provide to Metro Parks a copy of the Certificate of Occupancy and an itemized and detailed description of all elements comprising APCC's proposed Original Cost of Construction including all invoices and payments. Metro Parks shall review the proposed Original Cost of Construction provided by APCC and APCC shall provide to Metro Parks', its architect or consultant any supporting documentation requested. Within sixty (60) days of receipt of all necessary documentation, Metro Parks shall either agree with the proposed Original Cost of Construction or deliver to APCC a detailed list of those cost amounts that Metro Parks does not agree are appropriate for inclusion. Thereafter, Metro Parks and APCC shall work together to reach agreement on an agreed Original Cost of Construction.

25.8. If Metro Parks and APCC cannot reach agreement on a direct cost amount within ninety (90) days of Metro Parks providing to APCC a list of objected to costs, then the Original Cost of Construction shall be determined by binding arbitration in accordance with the laws of the State of Washington. The parties shall mutually agree upon an impartial arbitrator; and failing agreement, either party may apply to the Presiding Judge of the Pierce County Superior Court for the appointment of such an arbitrator with due notice being given to the other party. The parties shall share equally the arbitrator's fees. Except for sharing the arbitrator's fees, each side shall pay its own costs and fees, including any attorney's fees in any arbitration.

25.9. To provide adequate documentation of the Original Cost of Construction APCC and Metro Parks shall execute an addendum to this Lease stating the Original Cost of Construction as either agreed to or determined by arbitration, with the Certificate of Occupancy issued by the City of Tacoma attached thereto. This Addendum shall be executed within thirty (30) days of determination of the Original Cost of Construction.

25.10. Immediately upon transfer of possession from APCC to Metro Parks, this Lease and all duties and obligations of each party under this Agreement shall terminate.

26. ADA Compliance. All APCC improvements to the Premises shall comply with the requirements of the Americans with Disabilities Act as now in effect or hereafter amended, and all rules and regulations issued thereunder (hereinafter collectively referred to as the "ADA") and all similar state and local laws or regulations.

27. Nondiscrimination: Except to the extent permitted by bona fide occupational qualification, APCC agrees as follows:

27.1. APCC shall comply with all the federal, state, and local non-discrimination laws, ordinances, regulations and policies, which are otherwise applicable to APCC. Accordingly, no person shall, on the ground of race, creed, color, religion, national origin, age, sex, marital status, sexual orientation, sexual identity, pregnancy, or the presence of any sensory, mental, or physical disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to illegal discrimination under any employment with or activity of APCC and its agents under this Lease. APCC shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, national origin, marital status, sex, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not limited to, the following: Recruitment, employment, upgrading, demotion or transfer, advertising, lay-off or termination, establishing rates of pay or other forms of compensation and selection for training.

27.2. APCC shall in all solicitation from any employees or job orders for employees placed with any employment agency, union, or other firm or agency, state that all qualified applicants shall receive consideration for employment without regard to their race, creed, color, national origin, marital status, sex, age, or the presence of any sensory, mental or physical handicap. The words: "Equal Opportunity Employer" shall appear in all advertisements.

28. Condemnation.

28.1. Eminent domain; cancellation. If, at any time during the continuance of this Lease, all or any portion of the Premises or the improvement of any building located thereon is taken, appropriated or condemned by reason of eminent domain, Metro Parks and APCC shall divide the proceeds and awards in the condemnation proceedings, and make the adjustments in a just and equitable manner under the circumstances. If the parties cannot agree on a just and equitable division or other adjustments within 30 days after the award has been made, the disputed matters shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter for its decision and determination. If legal title to the entire Premises is wholly taken by condemnation, the Lease shall be canceled.

28.2. Apportionment. Although title to the building and improvements placed by APCC upon the Premises will pass to Metro Parks, for purpose of condemnation, the fact that APCC placed the buildings on the Premises shall be taken into account. The deprivation of APCC's use of the buildings and improvements shall, together with the remaining term of the lease, be an item of damage in determining APCC's portion of the condemnation award. It is the general intent of this Section that, upon condemnation, the parties shall share in their awards to the extent that their respective interests are depreciated, damaged, or destroyed by the exercise of the right of eminent domain. If the condemnation is total, the condemnation award shall be allocated so that the then value of the Premises, as if it were unimproved property, is allocated to Metro Parks, and the then value of the building or buildings thereon is allocated between Metro Parks and APCC after giving due consideration to the number of years remaining in the term of this Lease and the condition of the buildings at the time of condemnation.

29. Independent Contractor / No Agency or Joint Venture. APCC shall be and remains an independent contractor with respect to the sale of any and all merchandise and food or in providing any service and does hereby accept full and exclusive liability for the payment of any and all taxes due the State and Federal governments, including all contributions or taxes for social security, workmen's compensation insurance, unemployment insurance, and/or old age retirement benefits, pension, or annuities now or hereafter imposed under any State or Federal law which are measured by wages, salaries, or other remuneration paid persons employed by APCC for work performed

under the terms of this Lease Agreement and shall indemnify and save harmless Metro Parks from any such contributions or taxes or any liability therefore. Nothing herein is intended to nor shall create an agency, partnership or joint venture agreement, arrangement or relationship between APCC and Metro Parks.

30. Notice. Any notice required to be given by any party to the other pursuant to the provisions of this Lease or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally or deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows or to such other address as either party may designate to the other in writing from time to time:

APCC: Asia Pacific Cultural Center
Attention: Executive Director
3513 East Portland Avenue
Tacoma, WA 98404

Metro Parks: Metropolitan Park District of Tacoma
Attention: Executive Director
4702 South 19th Street
Tacoma, WA 98405

31. Quiet Enjoyment. Metro Parks warrants title and quiet enjoyment of the Premises.

32. Attorneys' Fees. Except where expressly allocated otherwise in this Lease, in any action in any forum (including any appeals) brought to enforce any provisions of this Lease, the prevailing party shall be entitled to recover from the other party all reasonable costs and reasonable attorneys' fees incurred by the prevailing party.

33. Construction. This Ground Lease shall not be construed more favorably to one party over another, notwithstanding the fact one party, or its attorney, may have been more responsible for the preparation of this document.

34. Nonwaiver of Breach. The failure of a party to insist upon strict performance of any of the covenants and agreements of this Lease or to exercise any option herein contained in any one or more instances shall not be construed to be a waiver or relinquishment of any such, or any other, covenant or agreements; but the same shall be and remain in full force and effect.

35. Successors. The terms, covenants and conditions herein contained shall accrue to the benefit of the successors and assigns of the parties hereto.

36. Governing Law. This Lease is made pursuant to and shall be construed in accordance with the laws of the State of Washington.

37. Complete Agreement. The Demolition and Construction Agreement and this Lease fully integrates the understanding of the parties. It supersedes and cancels all prior negotiations, correspondence and communication between the parties with respect to the Premises. No oral modification of or amendment to this Lease shall be effective; however, this Lease may be modified or amended by written agreement signed by all the parties hereto

38. Paragraph Headings, Gender and Number. Paragraph headings are not to be construed as binding provisions of this Lease; they are for the convenience of the parties only. The masculine, feminine, singular and plural of any word or words shall be deemed to include and refer to the gender appropriate in the context.

39. Survival. All obligations of APCC hereunder not fully performed as of the expiration or earlier termination of this Lease shall survive such expiration or termination.

40. Time. Time is of the essence of this Lease with respect to the performance of every provision in which time of performance is a factor.

41. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

42. No Recording. This Lease shall not be recorded.

43. Exhibit List:

- Exhibit A – Legal Description of South Park
- Exhibit B – Depiction of the Premises
- Exhibit C –Construction Agreement

44. This Lease expressly replaces and supersedes the South Park Amended and Restated Lease Agreement dated _____.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date opposite their respective signatures.

ASIA PACIFIC CULTURAL CENTER

**METROPOLITAN PARK DISTRICT
OF TACOMA**

By: _____

Faaluaina Pritchard
Executive Director

Dated: May ____, 2024.

By: _____

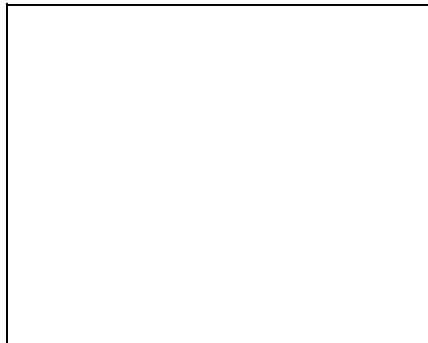
Shon Sylvia
Executive Director

Dated: May ____, 2024.

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Faaluaina Pritchard is the person who appeared before me, and said person acknowledged that she signed this instrument and on oath stated that she was authorized to execute the instrument and acknowledged it as the Executive Director for the Asia Pacific Cultural Center, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May _____, 2024.



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Shon Sylvia is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of Metropolitan Park District of Tacoma, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May _____, 2024.



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A
**LEGAL DESCRIPTION OF SOUTH PARK PROPERTY
OF WHICH THE PREMISES ARE A PART**

Pierce County Tax Parcel No. 0320192039:

Section 19 Township 20 Range 03 Quarter 22 (SOUTH PARK) BEG AT NW COR OF NW TH E 167 FT TH S 25 DEG 50 MIN E 350 FT TH E 50 FT TH S 25 DEG 50 MIN E 1106 FT TO S LI OF GOVT LOT 1 TH W TO E LI OF PUGET SOUND AVE TH N ON SD E LI TO N LI OF S 50TH ST TH W TO W LI OF NW TH N TO POB EXC SOUTH TACOMA WY ALSO BEG AT SE COR OF B 5 VAN FOSSEN & RAMAGE ADD TH N 27 DEG 30 MIN W TO E LI OF BIRMINGHAM ST TH N ON EXT OF SD ST 84.74 FT TH NWLY THRU A TO L OF 13 DEG 19 MIN 30 SEC 74.45 FT TH NWLY THRU A TO L OF 14 DEG 19 MIN 15 SEC 112.09 FT TH NWLY THRU A TO L OF 37 DEG 33 MIN 15 SEC 29.66 FT TO N LI OF S 52ND ST EXT TH W TO SE COR OF B 2 SD VAN FOSSEN & RAMAGE ADD TH N 27 DEG 30 MIN W TO NE COR SD ADD TH E 150 FT TH S 27 DEG 30 MIN E 612 FT TH W 150 FT TO POB ALSO BEG AT SE COR OF OAKWOOD CEMETERY TH S ON E LI OF GOVT LOT 2 266 FT TH N 21 DEG 45 MIN W 215 FT TH W TO E LI OF BIRMINGHAM ST TH N 66 FT TH E TO POB ALSO L 1 THRU 4 B 1 WESTBROOKS ADD APPROVED COMB BY CY OF TAC BLUS DEPT 12/10/09 COMB OF 2-002, 2-028, 2-031 & 948500-001-0 SEG 2010-0403 JU 3/11/10JU

EXHIBIT B
DEPICTION OF THE PREMISES



EXHIBIT C
CONSTRUCTION AGREEMENT



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Russell, Director of Business, Administration and Planning

SUBJECT: Authorizing the Executive Director to Negotiate the Final Terms and Execute a Construction Agreement with the Asia Pacific Cultural Center for the Construction of a New Building at South Park.

DATE: May 8, 2024

EXECUTIVE SUMMARY: This resolution authorizes the Executive Director to negotiate the final terms and execute a Construction Agreement with the Asia Pacific Cultural Center (APCC) for the construction of a new building at South Park.

BACKGROUND: APCC is a non-profit organization that has been providing complementary cultural programming and services for the community for many years. Metro Parks entered into a lease agreement with APCC in 2012 to provide programming cultural programming and services in the former South Park Community Center building. This lease was updated in 2020 with a 20-year term and included capital improvements to the Cultural Center.

Metro Parks and APCC assessed the existing building and determined that it was functionally obsolete. Thereafter, APCC agreed to demolish that building at its sole expense, which was the subject of a separate Demolition Agreement. APCC completed the demolition work earlier this year. In the interim, APCC has been working with Metro Parks to design a new Cultural Center building to be constructed at South Park. The design drawings place the new building in the same footprint as the former South Park building. APCC will provide all project funding which is expected to be approximately \$18.3 million dollars. The Ground Lease at South Park for this new building to be constructed is addressed in a separate Ground Lease. APCC has secured all of the permits necessary to construct the new building.

Pursuant to the Construction Agreement, APCC will construct a 18,500 square foot building at a construction cost of approximately \$14.64 million dollars. The Construction Agreement will facilitate the working relationship and construction of the new building between Metro Parks, APCC and APCC's contractor, Korsmo Construction. This includes Metro Parks right to inspect the work for conformity with the building's detailed plans and specifications and to approve or disapprove of any changes.

FISCAL IMPACT: APCC provided all of the funding and did demolish the old building and related improvements. APCC is providing all of the funding to construct the new cultural center building within the footprint of the previous building according to the terms of the Construction Agreement. Metro Parks is providing a Ground Lease for the purpose of providing a place to construct that new building.

ADDITIONAL INFORMATION: For additional information, please contact Debbie Russell, Director of Business, Administration and Planning at (253) 305-1086 or debbie.russell@tacomaparks.com.

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. R

AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE THE FINAL TERMS AND EXECUTE A CONSTRUCTION AGREEMENT WITH THE ASIA PACIFIC CULTURAL CENTER FOR THE CONSTRUCTION OF A NEW BUILDING AT SOUTH PARK

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desires to maintain quality facilities at South Park; and

WHEREAS, Metro Parks has leased the former South Park Community Center building to the Asia Pacific Cultural Center (APCC) since 2012; and

WHEREAS, APCC is a non-profit organization and long-term partner with Metro Parks providing complementary cultural programming and services for the benefit of the community; and

WHEREAS, Metro Parks and APCC determined that the existing building at South Park was functionally obsolete; and

WHEREAS, Metro Parks and APCC entered into a Demolition Agreement to remove the building, at APCC’s sole expense, which APCC completed earlier this year; and

WHEREAS, APCC has worked with Metro Parks to design and permit a new building at South Park to be constructed with the footprint of the former building; and

WHEREAS, APCC has agreed to construct the new building at its sole expense at South Park subject to a separate Ground Lease, and APCC has agreed to provide programming and services for the benefit of the public at the new building. Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma that the Executive Director is authorized to negotiate the final terms and execute the Construction Agreement with the Asia Pacific Cultural Center for the purposes of constructing a new building at South Park and providing programming and services for the benefit of the public at the new building.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____2024.

President

ATTEST:

Secretary

Clerk



MEMORANDUM

TO: Board of Park Commissioners

THROUGH: Shon Sylvia, Executive Director

FROM: Debbie Russell, Director of Business Administration and Planning

SUBJECT: Granting Maintenance Covenant and Easement Access From MPT to COT for Storm Sewer Improvements in South Park

DATE: May 8, 2024

EXECUTIVE SUMMARY: Approval of a resolution is requested granting a stormwater maintenance covenant and access easement to City of Tacoma from Metro Parks Tacoma in South Park and authorizing the Executive Director to negotiate and sign said easement.

BACKGROUND: The City of Tacoma has approved the Permit for the development of the Asia Pacific Cultural Center in South Park, including enhancements to the Stormwater System. The Stormwater System is designed in accordance with City's stormwater regulations. Any damages caused by the failure of the Stormwater System shall be the sole responsibility of the Grantor or Grantor's successors-in-interest. This is an agreement to maintain and repair the storm sewer system.

FISCAL IMPACT: There is no dollar value attached to the granting of this covenant and easement.

ADDITIONAL INFORMATION: For additional information, please contact Debbie Russell, Director of Business Administration and Planning at (253) 305-1086 or debbie.russell@tacomaparks.com

METROPOLITAN PARK DISTRICT OF TACOMA

RESOLUTION NO. R

**GRANTING MAINTENANCE COVENANT AND EASEMENT ACCESS FROM
MPT TO COT FOR STORM SEWER IMPROVEMENTS IN SOUTH PARK**

WHEREAS, the Board of Park Commissioners of the Metropolitan Park District of Tacoma desires to construct improvements to South Park; and

WHEREAS, in order to complete said improvements City of Tacoma requires a maintenance covenant and access easement to City of Tacoma for the storm sewer system.; and

WHEREAS; the proposed easement permits the Metro Parks to install, construct, operate, inspect, maintain, remove, repair and replace the storm sewer improvements; Now, therefore, be it

RESOLVED by the Board of Park Commissioners of the Metropolitan Park District of Tacoma to approve the maintenance covenant and access easement to City of Tacoma as described in the covenant and easement, and that the Executive Director be authorized to negotiate and sign said easement on behalf of the Board.

The foregoing resolution was adopted by the Board of Park Commissioners of the Metropolitan Park District of Tacoma at a regular meeting held on _____2024.

President

ATTEST:

Secretary

Clerk